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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

INSINKERATOR LLC, A Delaware
limited liability company

Plaintiff,

vs.

JONECA COMPANY, LLC, a Delaware
limited liability company, and THE
JONECA CORPORATION, a California
corporation

Defendants.

JONECA COMPANY, LLC, a Delaware
limited liability company,

Counter-Claimant,

vs.

INSINKERATOR LLC, a Delaware
limited liability company,

Counter-Defendant.

Case No. 8-24-cv-02600-JVS-ADS

Judge: Honorable James V. Selna

**PLAINTIFF'S REPLY IN
SUPPORT OF MOTION TO
ENFORCE PRELIMINARY
INJUNCTION**

REDACTED VERSION OF
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1 **I. Introduction**

2 Joneca's opposition magnifies the problems with its compliance with the
3 Court's PI Order. It offers excuses that ISE predicted in its opening brief, and each
4 remains unpersuasive. Its representations that it substantially complied with the
5 requirement to sticker product packages and in-store signage is contradicted by the
6 numerous packages and signage that ISE uncovered without the disclaimer. As for
7 online marketing, Joneca tries to deflect blame for its noncompliance on third parties
8 by claiming ISE's requests are not "feasible." In doing so, it fails to substantiate those
9 third party "policies," likely because they are demonstrably false. The opposition
10 makes clear that Joneca has not substantially complied with the PI Order.

11 ISE's motion is not a "gotcha," nor did it "scour" the country for
12 noncompliance with product packages. ISE sampled random stores in locations
13 throughout the country to see if Joneca complied with the Court's PI Order. What it
14 found was a systemic problem with Joneca's compliance. In fact, ISE conducted a
15 subsequent investigation since the filing of its motion, and it continues to discover
16 numerous packages and in-store signage and displays that lack disclaimers. Reply
17 Declaration of Adeline Schmidt ("Schmidt Reply Decl.") ¶¶ 3–10, Exs. A–H; Reply
18 Declaration Rodney Polanco ("Polanco Reply Decl.") ¶¶ 3–4, Ex. A; Reply
19 Declaration of William Melsheimer ("Melsheimer Reply Decl.") ¶ 2, Ex. A; Reply
20 Declaration of Joanna Stanley ¶¶ 3–5, Exs. A–C; Declaration of Joseph Grinstein ¶
21 3, Ex. A. Each time over the last few months that Joneca has asserted that these are
22 "*de minimis*" ISE has offered more examples of deficiencies. These are not technical
23 violations—they are emblematic of a widespread problem with Joneca's compliance.

24 Joneca's opposition is also wrong about the parties meet and confers. The
25 parties conferred two times to discuss Joneca's noncompliance, including in June and
26 August. Dkt. 139-29–33. Both before and after the conferences, ISE explained the
27 problems it uncovered with Joneca's compliance in detailed letters and emails, which
28 included specific examples of noncompliance. Each time, ISE requested information

1 from Joneca about its compliance. *Id.* For example, ISE twice requested that Joneca
2 provide the report from the third-party contractor it hired to conduct the disclaimer
3 stickering. Dkt. 139-32; Dkt. 139-29. Joneca never provided that report. In fact,
4 Joneca even represented that “we will provide any further information, including
5 with regard to the efforts of Joneca’s contractor, in our briefing to the court.” Dkt.
6 139-29. Notably absent from Joneca’s opposition is the third-party contractor’s
7 compliance report. Instead, Joneca provides “summaries” of its contractor’s visits to
8 certain stores that are contradicted by ISE’s visits to those same stores weeks or
9 months later. The parties’ conferences resulted in an impasse because Joneca refused
10 to acknowledge its noncompliance and was unwilling to correct the deficiencies that
11 ISE identified both online and in stores. After eight months of noncompliance with
12 the PI Order, ISE was left with no choice but to file its motion.¹

13 **II. Argument**

14 Joneca has not substantially complied with the Court’s PI Order. First, product
15 packages throughout the country still—that is, eight months after the PI Order—lack
16 the required disclaimer. These are not one-offs, but rather examples of a pervasive
17 problem with Joneca’s compliance. Second, in-store signage and displays likewise
18 lack the disclaimer, and Joneca’s interpretation that the disclaimer does not apply to
19 informational placards displayed next to the products is unreasonable. Finally, Joneca
20 has failed to include a “clear and conspicuous” disclaimer in online promotional
21 materials. Its excuses for burying the disclaimer on product pages are meritless, and
22 its interpretation that the PI Order does not apply to search results is wrong. Joneca
23 has not taken all reasonable steps to comply with the PI Order. The numerous
24 examples of noncompliance both in retail stores and online are clear and convincing
25

26 ¹ ISE satisfied the requirements of L.R. 7-3 because it thoroughly discussed Joneca’s
27 noncompliance and a motion to enforce compliance multiple times before filing its motion. Dkt.
28 139-29–33. ISE sought to resolve these issues by providing examples, offering suggestions, and
requesting information. Joneca’s failure to provide the requested information coupled with its
widespread noncompliance thwarted any attempt to reach resolution.

1 evidence that Joneca has not substantially complied with the injunction. ISE has met
2 its burden to show that Joneca has not complied with the PI Order, and its motion
3 should be granted.

4 **A. Product Packaging**

5 1. Joneca's Excuses for its Noncompliance are Unpersuasive

6 Joneca offers a litany of excuses in an attempt to rebut the noncompliance that
7 ISE uncovered at various retail locations. First, and as ISE expected, Joneca claims
8 that the examples that ISE identifies are "*de minimis*." Dkt. 152-1 ("Opp.") at 8. This
9 is not the first time that Joneca has tried to claim that ISE's examples were merely
10 one-offs. In its May 20, 2025 letter, Joneca claimed that "any remaining unlabeled
11 product that somehow escaped the stickering effort is *de minimis*." Dkt. 139-31 at 1–
12 2. In its July 3, 2025 letter, Joneca again claimed that the additional examples ISE
13 identified were "outliers" and "*de minimis*." Dkt. 139-33 at 2. And, once again, in its
14 opposition brief, Joneca claims that the latest examples ISE identified are "*de*
15 *minimis*." Opp. at 4. This is not a credible position. As a preliminary matter, ISE cited
16 numerous examples in its motion that were not previously identified to Joneca. To
17 claim each successive example is *de minimis* plainly ignores the numerous examples
18 that ISE continues to provide. ISE sent its investigators out to stores in seven different
19 states across the country, including California, Texas, Illinois, Pennsylvania,
20 Maryland, North Carolina, and Georgia. Dkt. 139-1 at ¶¶ 3–6. The ISE employees
21 did not "scour" their states hunting for packages without disclaimers, but rather to
22 the local stores close to where they lived. That they quickly identified so many
23 examples of packages lacking disclaimers reveals systemic deficiencies in Joneca's
24 stickering and are not one-off or *de minimis* problems.

25 The Declaration of Jonathan Chavez cites "document[s] summarizing Joneca's
26 contractor's visit" to some of the stores that ISE identified. Dkt. 152-2 ("Chavez
27 Decl.") at ¶¶ 19–24. It is unclear why Joneca does not provide the full report, which
28 ISE requested several times. It is also unclear if these documents were prepared by

1 the contractor itself (because no names or company are identified in the documents)
2 or by Joneca (and reflect Joneca's summary of what it was told by the contractor).
3 Regardless, these summaries reveal that Joneca's contractor visited the retail stores
4 in April. *Id.* But the unstickered packages ISE uncovered were all *after* Joneca's
5 contractor visited the store. Dkt. 139-1. Joneca's stickering efforts were therefore
6 inadequate and incomplete. For the retailers that chose to conduct the stickering
7 themselves, Joneca's instructions (which they have not provided) must have been
8 deficient. Joneca claims that the existence of the unstickered packages "do not make
9 sense." Opp. at 9. ISE agrees, as its spot checks should not consistently find examples
10 of deficient packaging if Joneca had complied with the PI Order. But it is. Joneca's
11 assertions that it substantially complied with the PI Order "do not make sense"
12 considering the widespread examples of noncompliance that ISE continues to
13 uncover.

14 Second, Joneca claims that the fact that ISE's pictures are only of one side of
15 the product package means it could still be in compliance. Opp. at 8. Joneca asks the
16 Court to assume that the stickers must be on one of the other three sides of the product
17 package. There is no basis for such an assumption. For nearly all the pictures attached
18 to the declaration of Adeline Schmidt, the picture was taken of the front of the product
19 packages as they would appear to a consumer walking the aisles of the store. The
20 disclaimer was required to be displayed on the front side of the product packages. PI
21 Order at 18 n.10 ("The disclaimer shall be placed near the claim of horsepower on
22 the front of the product package."). If Joneca had applied the stickers according to
23 the PI Order, they would have appeared in the pictures on the front side of the
24 packages. They did not. Joneca's position that ISE should have included pictures
25 from each side of the product packages to find the disclaimer also defeats the spirit
26 of the PI Order.

27 Third, Joneca claims that the unlabeled units could be due to one of (1)
28 customer returns that were purchased before the inventory was stickered, (2) in-

1 transit delivery, or (3) inventory unavailable to the contractor. Opp. at 10. These
2 excuses presuppose that Joneca had a one-time obligation to comply. Not so. Joneca's
3 one-time stickering does not relieve it of its efforts to comply with the PI Order.
4 Joneca was enjoined from "[m]aking any false and deceptive horsepower claims
5 regarding Joneca-made garbage disposal products in any advertising, marketing,
6 promotional, or other commercial materials or communications" and from
7 "[a]ssisting, permitting, or causing to be made by any third party any false and
8 deceptive horsepower claims regarding Joneca-made garbage disposal products." PI
9 Order at 18–19. That is an ongoing obligation. Indeed, Joneca appears to agree that
10 its obligations are ongoing as it applies the disclaimer sticker to all new products that
11 leave its facilities. Chavez Decl. ¶ 6. This applies equally to the product packages in
12 circulation that had left Joneca's facilities before the PI Order issued. Joneca's
13 knowledge of retail stores' return policies (*see* Opp. at 10) means it was well aware
14 of the possibility of customer returns or of in-transit inventory. Joneca has an
15 obligation to return to those stores to ensure they are stickered. These unstickered
16 packages are not a *de minimis* amount or "on-off returns"—[REDACTED] units in customer
17 returns over a three-month period from Home Depot alone is substantial. Joneca
18 cannot renounce its obligations to thousands of product packages. Those packages
19 should have been stickered when they were originally purchased. The number of
20 returns are likely even higher taking into account other retail stores like Lowe's,
21 Walmart, and Costco. It is immaterial that Joneca "does not receive real-time, store-
22 level information" about returns or inventory. *See* Opp. at 11 n.5. Joneca or its
23 contractor can easily return to the stores periodically to check if the product packages
24 are stickered. Joneca could also ask its retail customers to periodically check that the
25 disposals on the shelves have the disclaimer and to report that information back to
26 Joneca. There is no evidence Joneca has done any of this. Joneca has not taken all
27 reasonable steps to comply with the PI Order.
28

1 The crux of Joneca's position is that the problems that ISE uncovered were the
2 fault of the third-party retailers, not Joneca. *See Opp.* at 12. But Joneca cannot hide
3 behind its customers and disavow the numerous examples of noncompliance. The
4 Court enjoined Joneca from assisting, permitting, or causing third parties from
5 making false and deceptive horsepower claims, meaning Joneca is on the hook for
6 the noncompliance of its retail customers. Joneca could have easily returned to the
7 retail locations periodically and communicated with them frequently about the
8 importance of the disclaimer sticker and the steps to be taken to ensure compliance.
9 There is no evidence that Joneca did anything beyond its one-time, haphazard
10 stickering of certain stores.

11 Joneca's citation to *Homeland Housewares, LLC v. Euro-Pro Operating LLC*,
12 is distinguishable, as the defendant in that case took reasonable steps to ensure
13 compliance with the Court's order, while Joneca has not. As the Court noted, the
14 defendant "undertook tracking of its retailers' weekly sell-through of the Nutri Ninja
15 Pro, to determine whether there was likely to be remaining stock with the disputed
16 packaging on retailers' shelves" which allowed it to "generated estimates of how
17 quickly the retailers were depleting their old stock." *Homeland Housewares*, 2015
18 WL 12746229, at *3 (C.D. Cal. Apr. 21, 2015) (citations omitted). Additionally, the
19 defendant undertook "a voluntary recall of packaging as to Bad, Bath, and Beyond,"
20 and "also undertook to sticker over all the packages its contractors could find on the
21 shelves at Target and Walmart." *Id.* Unlike the defendant in *Homeland Housewares*,
22 there is no evidence that Joneca tracked inventory at retail locations or recalled its
23 products at any retail location. Although Joneca endeavored to sticker product
24 packages through a contractor, the defendant in *Homeland Housewares* substantiated
25 the precise number of packages it stickered, while Joneca has not. The defendant in
26 that case did substantially more to comply with that order than Joneca did here.
27 Finally, the Court noted its surprise that the plaintiff was discovering violations *six*
28 *months* after the defendant claimed to ship all packages with the corrected

1 advertising, and invited the plaintiff to renew its motion if discovery turns up that the
2 defendant was wrong. *Id.* at *4. Here, ISE is still uncovering problems *eight months*
3 after the Court’s PI Order despite Joneca’s claim that it stopped shipping packages
4 without the disclaimer.

5 2. ISE Continues to See Noncompliance with Product Packages
6 Across the Country.

7 Since the filing of ISE’s motion to enforce, ISE has conducted additional
8 investigations into Joneca’s noncompliance. Attached to this motion are additional
9 examples of product packages missing disclaimers that ISE’s investigators have
10 uncovered within the last two weeks in stores throughout the country. Schmidt Reply
11 Decl. ¶¶ 3–10; Polanco Reply Decl. ¶¶ 3–4; Grinstein Decl. ¶ 3. ISE continues to see
12 noncompliance in retail stores across the country. Each time Joneca asserts that
13 missing disclaimers are “one-offs,” ISE’s spot checks quickly disprove that notion
14 by identifying more and more examples of noncompliance. These examples of non-
15 compliant disclaimers, discovered more than eight months after the Court’s PI order,
16 reflect a systemic problem in Joneca’s approach to complying with the injunction.

17 **B. In-Store Signage and Displays**

18 Joneca’s opposition likewise disclaims any responsibility for the problems
19 identified with in-store signage. It first claims that Home Depot and Lowe’s maintain
20 control over their placards, not Joneca. The only support Joneca presents is from the
21 Chavez Declaration, which asserts that those stores “maintain control over the design
22 and implementation of their price placards.” Chavez Decl. ¶ 35. Joneca does not cite
23 any company policy or communication with the retailer to substantiate that claim.
24 Nor does Joneca provide any indication that it communicated with the retailer to ask
25 them to correct the false advertising on the placards, such as by placing the disclaimer
26 sticker next to the HP claim. The Court should not accept these representations at
27 face value.

28 Joneca also claims that the placards are beyond the scope of the PI Order.
Joneca was enjoined from assisting, permitting, or causing third parties from making

1 false and deceptive horsepower claims “in any advertising, marketing, promotional,
2 or other commercial materials or communications currently in stores or in any third
3 party’s possession or otherwise already disseminated by Joneca prior to the date of
4 this Order . . . including websites and in-store signage and displays.” PI Order at 19.
5 The placards next to the products on the product shelves qualify as in-store signage
6 or displays. To be clear, ISE is not referring to the price placards that are small
7 enough to only fit the price and the barcode, but rather the informational placards that
8 list the disposal brand, its HP, warranty, RPM, and other facts like whether a cord is
9 included, the anti-jam design and the noise level. *See* Melsheimer Reply Decl. ¶ 2,
10 Ex A; Schmidt Reply Decl. ¶¶ 3, 5–6, Exs. A, C, and D; Polanco Reply Decl. ¶¶ 3–
11 4, Ex. A; Stanley Reply Decl. ¶¶ 3, 5, Exs. A, C; Grinstein Decl. ¶ 3, Ex. A.
12 Considering the host of information appearing on those cards—the first of which is
13 horsepower—there is plenty of room for the disclaimer. Those placards are
14 undeniably signage because they promote the brand of the disposal and its features.
15 Indeed, those are often the *only* signs in the stores that are brand-specific, as the
16 signage at retail stores for disposals are typically limited to categorizing the disposals
17 by horsepower. *See* Schmidt Reply Decl. ¶¶ 3–10, Exs. A–H.

18 Joneca cannot escape its obligations by pointing to the broad language of the
19 PI Order as lacking specificity. As ISE explained in its motion, the Court was not
20 required to spell out every permutation of how a disclaimer should appear in every
21 context. Mot. at 12 (citing *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1211
22 (9th Cir.2000) ((explaining that an injunction need not “catalog the entire universe”
23 of its scope but must provide parties with “adequate notice”). These placards are well
24 within the scope of the PI Order, and Joneca’s interpretation that these are excluded
25 is not a reasonable or good faith interpretation of the PI Order. Joneca’s interpretation
26 is also inconsistent with its own conduct—Joneca has placed the disclaimer on
27 placards at certain Lowe’s locations. Stanley Reply Decl. ¶ 4, Ex. B. It cannot claim
28 that the placards are outside of the scope of the PI Order while also applying the

1 disclaimer in some stores (Lowe's), but not others (Home Depot). This type of
2 selective compliance violates the PI Order.

3 ISE has since uncovered additional examples of Joneca failing to comply with
4 its obligations to place the disclaimer on in-store signage and displays like placards.
5 Melsheimer Reply Decl. ¶ 2, Ex A; Schmidt Reply Decl. ¶¶ 3, 5–6, Exs. A, C, and
6 D; Polanco Reply Decl. ¶¶ 3–4, Ex. A; Stanley Reply Decl. ¶¶ 3, 5, Exs. A, C;
7 Grinstein Decl. ¶ 3, Ex. A. These include placards in Home Depot stores across the
8 country. In fact, while Joneca provides a few examples of the disclaimers on in-store
9 signage at a Lowe's store, Joneca does not provide *any* evidence that in-store signage
10 and displays at Home Depots, which has thousands of locations across the country,
11 display the disclaimer at all. Joneca cannot hide behind excuses of customer returns,
12 in-transit products, or inventory for its failure to comply. The in-store signage and
13 displays do not change, and Joneca could have applied the disclaimer on the placards
14 and other in-store signage one time in each store to satisfy its obligations. It did not
15 do so. Joneca has not substantially complied with the PI Order as to in-store signage
16 and displays.

17 **C. Online Product Pages**

18 Like its approach to in-store signage, Joneca seeks to hide behind the broad
19 language of the Court's Order to claim that it has complied. The PI Order was not
20 silent about how the disclaimer should appear. The Court made clear that the
21 disclaimer—whether appearing on product packages or online listings—must be
22 “clear and conspicuous,” a point that Joneca agrees to in principle but fails to
23 implement in practice. PI Order at 18 n.10. ISE's insistence on “clear and
24 conspicuous” disclaimer is not a “competitive preference” as Joneca claims, but a
25 straightforward and Court-ordered requirement.

26 Joneca states that ISE has “no basis” that some websites lack the disclaimer.
27 But the Walmart listing for the “American Standard Slim Line 1.25HP Food Waste
28 Disposer” lacks the disclaimer. Melsheimer Reply Decl. ¶ 3, Ex. B. In fact, beneath

1 the “Product details” appears Walmart’s own disclaimer: “We aim to show you
2 accurate product information. Manufacturers, suppliers and others provide what you
3 see here, and we have not verified it. See our disclaimer.” *Id.* Thus, while Joneca
4 may be right that it “does not control these websites,” Opp. at 16, websites like
5 Walmart’s appear to give Joneca wide latitude to place the necessary disclaimer in
6 the product details section of the pages.

7 Joneca denies that the disclaimers online are buried in fine print. Opp. at 16.
8 But the websites themselves prove otherwise. Home Depot is just one example, and
9 the disclaimers on its site are incredibly difficult to find. On the product page for a
10 Glacier Bay 3/4 HP disposal, three bullet points appear near the top of the page next
11 to pictures of the product. Melsheimer Reply Decl. ¶ 4, Ex. C at 2–7. These include
12 information about the disposal, including “Compact design perfect for kitchens with
13 restricted cabinet space,” “Features corrosion-proof stainless steel grinding
14 components,” and “Complete with bioshield antimicrobial technology to prevent
15 odors.” *Id.* Joneca offers no reason why the disclaimer does not appear there at the
16 top of the page. Only until the user clicks “View More Details” are they taken to the
17 “About this Product” section, where the user then has to scroll past the illustrations
18 about product features to the “Highlights” section that provides the disclaimer. *Id.*
19 This assumes that the user even clicks the “View More Details” at all—if not, the
20 user has to scroll from the top of the page several times to arrive at the “Product
21 Details.” *Id.* Then, the disclaimer appears only if the user clicks to expand the
22 “Product Details” box, which forces the user to scroll even further past various
23 illustrations of product features (including horsepower) before seeing the text box
24 that includes the disclaimer. The disclaimer is then buried with other text and very
25 difficult for the user to find. Before finding that disclaimer, the user sees at least six
26 horsepower claims before encountering the disclaimer. *Id.* That cannot possibly be
27 “clear and conspicuous.” The user can even click “Add to Cart” to purchase the
28 disposal at the top of the page without scrolling far enough to see the disclaimer. If a

1 user can visit the product page, add the product to their cart, and pay for it without
2 ever encountering the disclaimer, then it is plainly not “clear and conspicuous.”

3 Joneca claims that Home Depot’s website “precludes the main image
4 displayed on product landing pages from containing text.” Opp. at 17; Chavez Decl.
5 ¶ 48. That appears to be yet another made-up policy for which Joneca provides no
6 support. Joneca cannot substantiate such a claim because it is demonstrably false.
7 Home Depot allows text to appear on the main image of its products, including
8 garbage disposals. Attached as Exhibit C to the Melsheimer Reply Decl. are examples
9 from Trifecte, which has the text “Quick and Efficient Garbage Disposals” on the
10 main image, and Forno Acqua, which has the text “Built-in Motion Activated Cabinet
11 Light” and “Pre-Wired Air Switch & Power Cord” on the main image. Melsheimer
12 Decl. ¶ 4, Ex. C at 8–10. Indeed, even ISE includes text on the main image of its
13 disposals, including text like “NOW WITH 5 YEAR LIMITED WARRANTY.” *Id.*
14 The Court should not credit Joneca’s representations or Mr. Chavez’s declaration
15 about the policies of third-party retailers. Nor should the Court credit Joneca’s
16 representations about the technical feasibility of disclaimers. There is no reason why
17 the disclaimer cannot appear at the top of the page. For example, a consumer
18 purchasing pepper spray on Amazon from a State that bans pepper spray is met with
19 a red text disclaimer at the top of the page next to the product title. Melsheimer Reply
20 Decl. ¶ 5, Ex. D. ISE offered this example at the parties meet and confer, and Joneca
21 offered no reason this could not be done for its garbage disposals.

22 The deficiencies are not limited to Home Depot, as Joneca implies, as Joneca
23 buries the disclaimer on other retail websites in places where the consumer is unlikely
24 to see it. Walmart’s website does not include a clear and conspicuous disclaimer at
25 the top of the webpage. The user has to scroll to see the “About this item” box, which
26 now has a series of bullet points but does not include the disclaimer. Melsheimer
27 Reply Decl. ¶ 3, Ex. B. Instead, the user must click “View full item details,” which
28 takes the user down to the “Product details.” *Id.* The disclaimer does not appear in

1 the first paragraph, but instead appears in the first bullet point below the first
2 paragraph. *Id.* Notably, if the user does not click that “View full item details,” then
3 the user must scroll to the “About this item” and click it to expand in order to
4 encounter the disclaimer. *Id.* Additionally, a user visiting the Lowe’s website
5 likewise has to scroll before they encounter the disclaimer. Dkt. 139-20. The
6 disclaimer should appear at the top of a retailer’s product webpage next to or
7 immediately below the product title.

8 Joneca has plainly not complied with the PI Order for the product websites that
9 sell its disposals. It has not implemented the disclaimer in the first feasible location,
10 but has instead buried them in places that consumers have to dig to find. The above
11 examples show that Joneca’s approach to compliance on product pages has been
12 unreasonable. Moreover, Joneca’s reference to the disclaimer in ISE’s Builder series
13 is irrelevant. ISE was not the party found to be falsely advertising its horsepower
14 claims and is not under a Court order to display a clear and conspicuous disclaimer.
15 Joneca’s excuses and finger pointing are not substitutes for its obligations to comply
16 with this Court’s ruling.

17 **D. Online Search Results**

18 Joneca does not dispute that the disclaimer does not appear in search results
19 on retail websites. *See Opp.* at 18–20. In doing so, it tries to assert that it is not feasible
20 to do so. The Court should not credit Joneca’s assertion that “most retailers, as a
21 policy, do not permit text” on thumbnail images. Joneca provides no company policy
22 to support that assertion, and its claim is plainly disproved by the other product
23 images that display text. Melsheimer Reply Decl. ¶ 4, Ex. C at 8–10. Joneca can and
24 should display the disclaimer in the thumbnail images. Similarly, the Court should
25 not credit Joneca’s representations on whether it is feasible to display the disclaimer
26 in the text beneath the product images, as it offers no support for why it is not feasible.
27 The search results on Walmart’s website, for example, contains numerous text entries
28 below the product image, including: the seller’s name, product title, ratings out of

1 five stars, the price, promotions, installation information, product information like
2 “grind storage” and “noise level,” and pickup and delivery information. Melsheimer
3 Decl. ¶ 3, Ex. B at 9. If the websites can fit all that information, surely the disclaimer
4 can fit too. Joneca has not proven otherwise but instead claims that it would be
5 impractical to include the disclaimer in search results. Joneca should not be the
6 arbiter on whether the disclaimer is “illegible” or makes sense “from a practical
7 standpoint.” Opp. at 19. This attitude of selective compliance is problematic—Joneca
8 is required to comply with the PI Order regardless of its opinions on how to display
9 the disclaimer.

10 Joneca is also wrong that it “repeatedly asked ISE to provide an example of a
11 disclaimer proposal for search results and received no response.” Opp. at 20. As
12 Exhibit A to the Melsheimer Declaration—which is an email from counsel for ISE
13 to Joneca recapping the parties’ meet and confer—notes: “I gave a few examples of
14 how disclaimers could appear in search results, whether in the thumbnail or in the
15 text immediately below the product title.” Dkt. 139-29 at 4. Those examples included
16 having the disclaimer in the thumbnail image or in the text below the thumbnail
17 where the promotional and informational text appears.

18 Faced with the reality that a disclaimer in search results is feasible, Joneca
19 instead claims that placing the disclaimer in search results is not within the scope of
20 the PI Order. This is a self-serving, unreasonable interpretation. As ISE explained,
21 the Court need not identify every possible permutation in an injunction. Mot. at 12.
22 It is Joneca that is violating the text and spirit of the PI Order by taking the position
23 that if the order did not identify an activity, it must be outside the scope. Not so. The
24 PI Order enjoins Joneca from making false and deceptive horsepower claims “in any
25 new advertising, marketing, promotional, or other commercial materials . . . on all
26 online and offline promotional materials produced, shipped, or disseminated on or
27 after the date of this Order.” PI Order at 18 (emphasis added). A search result that
28

1 touts a garbage disposal's horsepower is "advertising" for the product and falls
2 squarely within the "online [] promotional materials" that this Court envisioned.

3 Joneca claims that search results are "no different from a customer who walks
4 into a retail store and asks an employee where to find the garbage disposals, and is
5 directed by the employee to the correct aisle." Opp. at 19. This is the wrong analogy.
6 Joneca's scenario of asking the store employee "where are the garbage disposals?" is
7 the equivalent of an online consumer typing "garbage disposal" in the search bar to
8 be directed to the search results for disposals. The correct analogy is that the search
9 results are virtual shelves akin to the physical shelves that display the disposals in-
10 store. In both scenarios, different disposals appear side-by-side, classified by
11 horsepower, with prices and promotional information listed with the disposals. (To
12 take it one step further, visiting a product webpage is akin to a customer picking up
13 a product package and reading the information on the different sides of the package).
14 The PI Order explicitly applies to "in-store signage and displays." It must apply to
15 the equivalent displays online. Finally, Joneca asserts that a reasonable consumer
16 would know that the search results do not provide the full information about the
17 product. Opp. at 19. First, that shows the importance of including the disclaimer in
18 the first information they see about the product to give the consumer accurate
19 information about what they are buying. Second, as explained above, search results
20 include a host of information about the product: the seller's name, product title,
21 ratings out of five stars, the price, promotions, installation information, product
22 information like "grind storage" and "noise level," and pickup and delivery
23 information. Joneca offers no credible reason why the disclaimer should not be
24 included, too.

25 **III. CONCLUSION**

26 Joneca has not substantially complied with the Court's PI Order. It has not
27 taken all reasonable steps to comply and has adopted interpretations as to what is
28 required that are plainly unsupported. Joneca should be held accountable for its

1 noncompliance. For the foregoing reasons, the Court should grant ISE's motion to
2 enforce.

3
4 Dated: October 3, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff InSinkErator LLC, certifies that this brief contains 4,952 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 3, 2025

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